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In the Matter Of:

NEW ENGLAND COMPOUNDING PHARMACY INC. PRODUCTS LIABILITY

VIDEOTAPED DEPOSITION OF SAMUEL J. PENTA

December 04, 2015



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NEW ENGLAND COMPOUNDING PHARMACY INC. PRODUCTS LIABILITY
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Page 1

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: NEW ENGLAND COMPOUNDING MDL No. 2419
PHARMACY, INC. PRODUCTS Master Dkt.
LIABILITY LITIGATION 1:13-md-02419-RWZ

- - - - - x

THIS DOCUMENT RELATES TO:

All Actions

- - - - - x

VIDEOTAPED DEPOSITION OF SAMUEL J. PENTA

Friday, December 4, 2015

9:00 a.m.

Seaport Boston Hotel

1 Seaport Lane

Boston, Massachusetts 02210

Michelle Keegan, Court Reporter



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1 and reviewing the documents, came up with as a
2 vote, an advisory letter.

3 Q. Why were these treated as nondisciplinary?

4 A. That was at the discretion of the board.

5 Q. And since they were nondisciplinary, these
6 reports were never shared with the national board,
7 were they?

8 A. They were not. They were not shared.

9 Q. Do you have any information at all that
10 these three advisory rulings were ever furnished
11 to a third party writing or inquiring about NECC?

12 MR. DIGANGI: Objection.

13 A. I'm not aware.

14 Q. All right. And these advisory rulings
15 addressed conduct that was precisely what NECC was
16 up to in connection with the fungal meningitis
17 outbreak. Correct?

18 MR. DIGANGI: Objection.

19 A. (No verbal response)

20 Q. In each three of these, NECC was
21 soliciting out-of-state prescriptions. Correct?

22 A. Correct.

23 Q. The people that got sick or died in the
24 fungal meningitis outbreak were all out-of-state

1 residents, weren't they?

2 A. That's correct.

3 Q. You found when you did your investigation
4 in September or October of 2012 that NECC was not
5 requiring individual patient-specific
6 prescriptions. Correct?

7 A. That's correct.

8 Q. You found in South Dakota that NECC was
9 telling those folks they didn't have to do
10 individual patient prescriptions, didn't you?

11 MR. ELLIS: Objection.

12 A. They were advised by these advisory
13 letters that the conduct was not acceptable, it is
14 not compliant. It was advised in these advisory
15 letters. It's advised again in the 2006 consent
16 agreement.

17 Q. We'll get to that.

18 A. It's advised in multiple places, advisory
19 letters and consent agreement, not to -- to use
20 patient-specific prescriptions.

21 Q. All right. Well, let's look at the
22 January 2006 consent agreement. It's Exhibit 722.

23 (Exhibit 722 marked for identification)

24 A. Before we start, can I --



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1 Q. And is there any indication in the records
2 of the Board of Registration in Pharmacy that
3 there was another letter after November 8th, 2004,
4 that says "No deal, this is not acceptable"?

5 MS. DOUGHERTY: Objection.

6 MR. ELLIS: Objection.

7 MR. DIGANGI: Counsel, for the record,
8 when you say "this is not acceptable," do you mean
9 the entire proposal dated November 8th, 2004, or
10 the attachments, Exhibit A and B?

11 MR. GIDEON: I'll start with the former.

12 MR. DIGANGI: Thank you.

13 Do you understand the question, sir?

14 Q. Is there any correspondence back from the
15 Board of Registration in Pharmacy after
16 November 8th, 2004, that says your -- the contents
17 of your letter of November 8th with the
18 attachments are unacceptable to us, the Board of
19 Registration in Pharmacy?

20 A. So in the consent agreement of 2006, it's
21 referenced in the PSI agreement there will be
22 patient-specific prescriptions only. And it's
23 consenting to the consent agreement they signed
24 that they'll conform to all state, local, and



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1 federal laws.

2 Q. So is the only response to this letter,
3 then, the content we would draw from the consent
4 agreement of January 10th, 2006?

5 A. I just want to check one document here.

6 Q. I'm not going to rush you. Are you
7 looking for the consent agreement?

8 A. I am looking for --

9 Q. I want to save you as much time as I can.
10 All of the advisory letters are dated
11 September 30th, 2004. The letter we're looking at
12 is 11/8/04.

13 A. So this is referenced in -- the
14 prescription blanks are referenced and only a
15 prescription form in the PSI report and then again
16 in the consent agreement for following all state,
17 local, and federal laws.

18 Q. Is it correct, then, that the only
19 substantive response by the Board of Registration
20 in Pharmacy to Cadden's letter of November 8th,
21 2004, with this policy and procedure attached and
22 this pharmacy order form attached is the content
23 of the January 10th, 2006, consent order?

24 MR. DIGANGI: Objection.



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1 it's Friday afternoon and I know you want to get
2 out of here.

3 You were asked a lot of questions today
4 about Massachusetts Board of Pharmacy's
5 requirement of patient-specific prescriptions. Do
6 you remember those lines of questioning?

7 A. Yes, sir.

8 Q. And other states also, at least certain
9 other states also require compounding pharmacies
10 to have patient-specific prescriptions. Correct?

11 A. Yes, sir.

12 Q. Okay. Now, I want to show you what's been
13 marked as Exhibit 39 in this litigation. And you
14 don't have to see the whole thing. I'll represent
15 what this is. It's a file from Saint Thomas
16 Outpatient Neurological Clinic about their
17 ordering from NECC as well as a prior vendor of
18 preservative-free MPA.

19 And what I'd like to do is direct you to
20 page -- at the bottom right-hand side -- I'm
21 sorry. There's actually -- that's right. This
22 document is a little messed up. It has certain
23 Bates numbers on the bottom right-hand side but
24 then it's not consistent with Bates numbers



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1 about that?

2 A. No, I did not.

3 Q. There were some questions suggesting that
4 the board should have done something in response
5 to New England Compounding not requiring patients
6 prescription prescriptions.

7 Looking at this, do you think Saint Thomas
8 Outpatient neurological clinic should have done
9 something about complying with the law and
10 ordering patient-specific -- and having
11 patient-specific prescriptions?

12 MR. GIDEON: Objection. Form.

13 A. They should have ordered patient-specific
14 prescriptions for a legitimate medical purpose for
15 a legitimate medical patient.

16 Q. Mickey Mouse really doesn't do it, does
17 it?

18 A. No, sir.

19 Q. It violates Massachusetts law, doesn't it?

20 A. It does, sir.

21 Q. So there was basically conspiracy here
22 between Saint Thomas Outpatient neurological
23 clinic and New England Compounding Center to evade
24 the patient-specific prescription requirements of



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